

Letter of Findings: 14-20150666
Special Fuel
For the Year 2015

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Refiner and Supplier of transportation fuels was entitled to an abatement of a late filing penalty because the late filing of its return was not due to willful neglect.

ISSUE

I. Special Fuel Tax - Late Payment Penalty.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-5-1(d); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it is entitled to an abatement of a ten-percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is a multi-state company in the business of refining and supplying transportation fuels. Taxpayer files tax returns reporting special fuel tax. Taxpayer failed to timely file two tax returns. The Indiana Department of Revenue ("Department") assessed ten-percent penalties. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Special Fuel Tax - Late Payment Penalty.

DISCUSSION

Taxpayer argues that its failure to timely file its tax returns was inadvertent and that the Department should exercise its discretion to abate the penalties.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, are entitled to deference.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Taxpayer states that its failure to file the missing returns was "unintentional and due only to a personnel change." According to Taxpayer, it had recently "enlisted the assistance of an outside tax preparer for the periods July and August 2015" who was unaware that an estimated tax payment was due "on or before the 20th of the month."

There is no question that Taxpayer failed to file the July and August returns and pay the estimated tax in a timely fashion. However, there is no indication that Taxpayer's failure to file the returns constituted "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees in this instance that the ten-percent negligence penalty should be abated.

The Department is unable to address the penalty assessed for the late filing of the July 2015 return because Taxpayer's protest was not filed with the requisite 60 days following the date of the penalty assessment. See IC § 6-8.1-5-1(d).

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest of the July 2015 penalty is respectfully denied. As to the ten-percent penalty assessed for the late filing of the August 2015 return, Taxpayer's protest is sustained.

Posted: 05/25/2016 by Legislative Services Agency
An [html](#) version of this document.